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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,329	03/18/2004	Anna N. Yaroslavsky	910000-2043.1	5580

21874 7590 10/18/2006

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EXAMINER

BLEIBEL, NASSEIM K

ART UNIT

PAPER NUMBER

3737

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,329

Applicant(s)

YAROSLAVSKY ET AL.

Examiner

Nasseim Bleibel

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08/05/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 5/12/06; 9/30/05; 12/17/04; 10/18/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Applicant is advised that should claim 1 be found allowable, claim 15 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1, 8, 16, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Stavros Demos, US 2004/0006275 A1. Stavros discloses an apparatus for imaging a tissue region comprising: a light emitter operable to emit light having a wavelength and a first polarization direction to a tissue region, a light detector operable to detect light remitted from a tissue region having said first polarization and a second polarization direction perpendicular to first, an analyzer operable to form an image showing difference between said first polarization direction and said second polarization direction, whereby a depth of said image is determined in accordance with said wavelength (Stavros, claim 56, paragraphs 33 and 50).

5. Stavros discloses in claim 1 the method for imaging a tissue region comprising: detecting light remitted from the tissue a first polarization direction to a tissue region, a light detector operable to detect light remitted from a tissue region having said first polarization and a second polarization direction perpendicular to first, forming an image showing difference between said first polarization direction and said second polarization direction, whereby a depth of said image is determined in accordance with said wavelength (Stavros, claim 1 and paragraph 50).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 2-6, and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stavros Demos, US 2004/0006275 A1. Stavros discloses all the limitations of the claim except showing that the wavelength is in the range of 390nm and 750nm or in the range of 200nm and 2000nm. In paragraphs 31 and 50 Stavros shows the wavelength is in the range of 250nm to about 1100nm, preferable wavelengths ranging from 632.8nm and 532nm are used, which are within the ranges of what is claimed. It would have been obvious to someone skilled in the art, at the time of invention, to change the range of the wavelengths in order to encompass all of the values claimed depending on the purpose of what is trying to be done. As shown in paragraph 50 the use of contrast agents and then imaging within the wavelength ranges, by varying the wavelengths, a plurality of depths can be imaged is something that is known to someone skilled in the art.

9. Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stavros Demos in view of Daryl Hochman, US 2003/0236458 A1. Daryl shows that by combining the different images from the different wavelengths can produce a 3D image (Daryl, Paragraphs 238,241, and 242). Since Stavros device is suppose to detect tumors someone skilled in the art, at the time of invention, could have used this device in conjunction with what Daryl shows to generate a 3D image with the different images received at different depths.


Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasseim Bleibel whose telephone number is (571) 272-2796. The examiner can normally be reached on M-F 8AM to 4:30PM.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Casler Brian can be reached on (571) 272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nasseim Bleibel
Examiner
Art Unit 3737

NB


BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700